

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

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**SILVESTRE HERNANDEZ HERNANDEZ,**

Petitioner,

v.

**WARDEN, PORT ISABEL SERVICE  
DETENTION CENTER;**

**KRISTI NOEM**, Secretary of the  
Department of Homeland Security;

**PAMELA BONDI**, Attorney General of  
The United States;

**TODD M. LYONS**, Acting Director of  
U.S. Immigration and Customs Enforcement;

**MIGUEL VERGARA**, Harlingen Field  
Office Director, U.S. Immigration and  
Customs Enforcement.

Respondents.  
\_\_\_\_\_

CASE No.: 1:25-cv-337

**PETITIONER'S MOTION FOR TEMPORARY RESTRAINING  
ORDER AND SUPPORTING MEMORANDUM OF LAW**

**I. PRELIMINARY STATEMENT**

Petitioner, SILVESTRE HERNANDEZ HERNANDEZ, respectfully moves  
this Court for a temporary restraining order pending its adjudication of his Petition

for Writ of Habeas Corpus. Petitioner seeks narrowly tailored emergency relief ordering Respondents, and all persons acting in concert with them, to cease any ongoing actions and to refrain from taking any additional actions to effectuate Petitioner's removal from the United States or to transfer Petitioner outside the Southern District of Texas, Brownsville Division, while his habeas petition remains pending before this Court.

Hernandez is a thirty-five-year-old native and citizen of Mexico who has resided in the United States for more than forty-five years, who entered the United States as a minor in January 2006 and has resided in this country for nearly two decades. Since September 11, 2018, the Department of Homeland Security (DHS) repeatedly exercised discretion in his favor, determining that detention and removal were neither appropriate nor necessary.

Hernandez has been the beneficiary of multiple grants of deferred action, including Deferred Action for Childhood Arrivals (DACA) and, more recently, deferred action granted in connection with his pending U-visa petition. In February 2019, USCIS formally determined that the evidence submitted with Hernandez's Form I-918 established his eligibility for U nonimmigrant status and placed him on the statutory waitlist solely due to visa unavailability, granting him deferred action pursuant to regulation. That deferred action remains in effect today, as confirmed by

his valid employment authorization issued under category (c)(14) through February 16, 2026.

Consistent with DHS's discretionary determinations, ICE released Hernandez from custody on September 11, 2018, under an Order of Supervision (OSUP). From that date until December 8, 2025, Hernandez lived openly in the community, reported annually as directed, worked lawfully, and fully complied with every condition imposed by ICE. ICE never alleged that Hernandez posed a danger to the community or a risk of flight.

Nevertheless, on December 8, 2025, during a routine check-in and without prior notice, ICE revoked Hernandez's Order of Supervision and took him into custody, notwithstanding his active deferred action status and despite the absence of any removal or departure plan. In doing so, ICE failed to make any individualized findings that Hernandez posed a danger to the community or a risk of flight, as required by statute and regulation. See, 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4(l), 241.13(i). Hernandez does not challenge the underlying order of removal or U.S. Immigration and Customs Enforcement's general statutory authority to execute that order. Rather, he challenges the processes ICE employed, and continues to employ, in effectuating his removal, including the improper revocation of his Order of Supervision without notice, changed circumstances, or the procedural safeguards

managed by 8 U.S.C. § 1231 and 8 C.F.R. § 241.4. ICE's action therefore contravenes its own regulations governing post-order supervision and re-detention.

Following his re-detention in Florida, Hernandez was transferred through multiple ICE facilities and is currently detained at the Port Isabel Detention Center in Los Fresnos, Texas.

Because Hernandez is likely to succeed on the merits of his Petition for Writ of Habeas Corpus, and because he will suffer immediate and irreparable harm if Respondents are permitted to proceed with their current removal efforts, which, upon information and belief, are scheduled to occur imminently or are already underway, Petitioner respectfully requests that the Court issue a temporary restraining order enjoining Respondents from transferring Petitioner outside this Court's jurisdiction or removing him from the United States while this Court considers his habeas petition.

## **II. BASIS OF HABEAS PETITION**

On December 17, 2025, Hernandez filed a Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") challenging his unlawful detention at the Port Isabel Service Detention Center arising from ICE's unlawful revocation of his longstanding Order of Supervision (OSUP) and re-detention on December 8, 2025, when he appeared for his routine ICE check-in. ICE revoked Hernandez's OSUP without prior notice, without a meaningful opportunity to be

heard, and without any individualized findings that he posed a danger to the community or a risk of flight, as required by statute and regulation. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4(l), 241.13(i). The Petition is incorporated herein by reference as if fully set forth herein.

Hernandez is a native and citizen of Mexico. He was born in 1990 and is currently thirty-five years old. On or about January 20, 2006, when Hernandez was fifteen years old, he entered the United States without inspection and was not apprehended by immigration officials.

On June 25, 2014, U.S. Citizenship and Immigration Services (USCIS) approved Hernandez's Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA), valid from June 25, 2014, through June 24, 2016. *See, Habeas Petition, Exh A.* Hernandez did not subsequently renew DACA because USCIS denied his later request on March 29, 2019, after determining that his case was already covered by deferred action granted in connection with his pending Form I-918, Petition for U Nonimmigrant Status. *See, Habeas Petition, Exh B.*

On or about July 5, 2017, Hernandez was apprehended by ICE, and on that same date, the Department of Homeland Security (DHS) issued a Notice to Appear (NTA) charging him with removability under INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. *See, Habeas Petition, Exh C.*

On August 21, 2017, Hernandez submitted a Form I-918, Petition for U Nonimmigrant Status, with USCIS based on his victimization in an armed robbery.

***See, Habeas Petition, Exh D.***

On January 18, 2018, the Orlando Immigration Court denied Hernandez's application for cancellation of removal under INA § 240A(b)(1), 8 U.S.C. § 1229(b)(1). ***See, Habeas Petition, Exh E.*** On May 17, 2018, the Board of Immigration Appeals dismissed Hernandez's appeal from the Immigration Judge's decision dated January 18, 2018.

On September 6, 2018, the ICE Miami Field Office granted Hernandez an Administrative Stay of Deportation or Removal pursuant to INA § 241(c)(2) for a period of one year. ***See, Habeas Petition, Exh F.*** The stay was not subsequently renewed because Hernandez was already released under an Order of Supervision and continued to report annually without issue, particularly after USCIS granted him deferred action on February 11, 2019. ***See, Habeas Petition, Exh G.***

On February 17, 2022, USCIS approved Hernandez's Form I-765, Application for Employment Authorization, under category (c)(14), reflecting his grant of deferred action and consistent with issuance to individuals placed on the U-visa waitlist. ***See, Habeas Petition, Exh I.*** The employment authorization remains valid from February 17, 2022 to February 16, 2026. *Id.*

On December 8, 2025, Hernandez appeared for a routine ICE check-in accompanied by counsel, Vivian Canals. Despite documentary proof of his active deferred action, granted by USCIS because his U-visa petition remains pending solely due to the statutory visa cap, ICE abruptly revoked his long-standing Order of Supervision and took him into custody without prior notice, in violation of 8 C.F.R. § 241.4(1)(2). This action occurred after more than seven years of full compliance with his supervision and while Hernandez remained the beneficiary of deferred action under 8 C.F.R. § 274a.12(c)(14). At the time of detention, ICE neither identified nor communicated any intent to revoke supervision in advance, articulated any removal or departure plan, or alleged, let alone made any individualized finding, that Hernandez posed a danger to the community or a risk of flight.

Following his re-detention in Florida, Hernandez was transferred through multiple ICE facilities and is currently detained at the Port Isabel Detention Center in Los Fresnos, Texas.

The revocation of Hernandez's Order of Supervision and his resulting re-detention are arbitrary, punitive, and unlawful under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a)(6), and violate the Due Process Clause of the Fifth Amendment. For more than seven years, Hernandez complied with all

conditions of supervision and was affirmatively permitted to remain in the community pursuant to an Order of Supervision and active deferred action. ICE nevertheless revoked that supervision without notice, changed circumstances, or the individualized findings required by statute and regulation. Under these circumstances, Hernandez's detention is not reasonably related to a lawful purpose of civil immigration detention and contravenes the constitutional and statutory principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

ICE's actions violate its own governing regulations, which strictly limit when and how an Order of Supervision may be revoked. See 8 C.F.R. §§ 241.4(1)(2), 241.13(i). Despite Hernandez's long-standing compliance and continued eligibility for deferred action while on the U-visa waitlist, ICE arbitrarily revoked his Order of Supervision and re-detained him without justification or procedural safeguards. Such detention is punitive, exceeds ICE's statutory authority under 8 C.F.R. § 1231, violates due process, and warrants immediate judicial intervention.

#### **IV. JURISDICTION, VENUE, AND AUTHORITY**

This Court has jurisdiction over Hernandez's habeas petition under 28 U.S.C. §§ 2241 and 2243, because he is in immigration custody within this District and challenges that custody as unlawful under the U.S. Constitution and the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. § 1101 et seq.

This Court has subject matter jurisdiction over the petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus authority); U.S. Const. art. 1, § 9, cl. 2. (Suspension Clause), 28 U.S.C. § 1331 (federal question); U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution).

Venue is proper in the Southern District of Texas, Brownsville Division, under 28 U.S.C. § 1391(e), because Hernandez is currently in the custody of ICE at the Port Isabel Detention Center in Los Fresnos, Texas, and his immediate custodian and relevant ICE officials are located within this Division.

#### **V. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER**

District courts have the authority to issue a temporary restraining order (TRO) and/or a preliminary injunction to preserve the status quo and avoid irreparable harm while a suit is pending. *See* Fed. R. Civ. P. 65; *see also*, *Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989); *Fernandez-Roque v. Smith*, 671 F.2d 426, 430 (11th Cir. 1983).

In order to obtain a temporary restraining order, the movant must establish: "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). Immediate injunctive relief is an "extraordinary and drastic

remedy, and [the movant] bears the burden of persuasion to clearly establish all four of these prerequisites." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016). Additionally, a court may issue temporary injunctive relief without notice to the adverse party only if:

(A) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

## **VI. LEGAL ARGUMENT**

Petitioner satisfies all four requirements for the issuance of a temporary restraining order, and each factor weighs heavily in Petitioner's favor.

### **1. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS**

Petitioner has demonstrated a strong likelihood of success on the merits of his Petition for Writ of Habeas Corpus because Respondents' revocation of his long-standing Order of Supervision ("OSUP") and resulting detention violate the Fifth Amendment's substantive and procedural due process guarantees, exceed statutory authority under the Immigration and Nationality Act ("INA"), contravene binding regulations, and constitute unlawful final agency action under the Administrative Procedure Act ("APA").

**A. ICE's Revocation of Petitioner's Order of Supervision Violates Substantive Due Process**

Civil immigration detention is constitutionally permissible only when it bears a reasonable relationship to a legitimate governmental purpose, such as preventing flight or protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Detention that is arbitrary, excessive, or untethered to removal violates substantive due process. *Id.* at 689–90.

Here, Petitioner was subject to an OSUP for approximately seven years, during which time he fully complied with every condition imposed on him. ICE's sudden re-detention without any change in circumstances and without any finding that he is a danger or flight risk, bears no reasonable relationship to any legitimate governmental objective. Because Petitioner's detention serves no lawful purpose, he is likely to prevail on his substantive due process claim.

**B. ICE Revoked the Order of Supervision Without the Process Required by the Fifth Amendment**

The Due Process Clause requires notice and a meaningful opportunity to be heard before the government deprives an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). That requirement applies with full force to the revocation of an Order of Supervision.

Here, ICE revoked Petitioner’s OSUP abruptly and without prior notice, without stating any lawful basis for revocation, and without affording Petitioner any opportunity to respond. *See*, 8 C.F.R. §§ 241.4(l)(1); 241.13(i). This failure to provide even minimal procedural protections creates an intolerably high risk of erroneous deprivation of liberty, particularly where, as here, the governing regulations sharply limit when revocation is permitted and who may authorize it. *Id.*; see also, *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2).

Because Respondents ignored these basic procedural safeguards, Petitioner is likely to succeed on his procedural due process claim.

**C. ICE Acted Contrary to the INA and Its Implementing Regulations**

Under 8 U.S.C. § 1231(a)(6), detention beyond the ninety-day removal period is permitted only if the noncitizen is found to be a danger to the community or unlikely to comply with a removal order. Even then, detention must cease once removal is no longer reasonably foreseeable. *Zadvydas*, 533 U.S. at 699–700.

Regulations further restrict revocation of an Order of Supervision, specifying both the limited grounds for revocation and the officials authorized to do so, as well as requiring notice and a prompt opportunity to respond. 8 C.F.R. § 241.4(l). Respondents failed to comply with these statutory and regulatory prerequisites.

ICE made no findings that Petitioner is a danger or flight risk and identified no violation of OSUP conditions. Petitioner has had an order of removal since January 18, 2018, and has been out in the community on an Order of Supervision since September 11, 2018, and ICE has not effectuated his removal. Because agencies may not detain individuals outside the bounds set by Congress, Respondents' actions are unlawful and likely to be set aside. *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018).

**D. The Revocation of the Order of Supervision Is Unlawful Final Agency Action Under the APA and *Accardi* Doctrine**

ICE's revocation of the Petitioner's OSUP constitutes final agency action. That action is reviewable and unlawful under the APA because it is contrary to law, arbitrary and capricious, and in excess of statutory authority. 5 U.S.C. § 706(2). Respondents also violated the *Accardi* doctrine by failing to follow their own binding regulations and internal procedures governing revocation of supervision and orderly departure. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Given these violations, Petitioner is likely to prevail on his APA and *Accardi* claims.

2. **PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS TRANSFERRED OR REMOVED**

Absent immediate injunctive relief, Petitioner will suffer profound and irreparable harm if he is removed from the United States or transferred outside this Court's jurisdiction while his habeas petition is pending. The loss of liberty and the potential frustration of this Court's jurisdiction constitute harms that cannot be remedied after the fact and therefore warrant emergency relief.

A. **Removal or Transfer Would Irreparably Deprive Petitioner of His Liberty and Meaningful Judicial Review**

"Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The unlawful deprivation of liberty, even for a brief period, constitutes irreparable harm as a matter of law.

If Respondents remove Petitioner or transfer him outside the Southern District of Texas while this habeas action is pending, Petitioner will lose meaningful access to this Court and risk mooted his claims altogether. Once Petitioner is either removed from the United States or transferred to a distant jurisdiction, the harm cannot be undone by a later favorable ruling. Reinstatement of physical liberty, access to counsel, restoration of jurisdiction are not speculative harms; they are concrete, immediate, and irreversible.

Removal from the United States would be an even more extreme harm. It would likely moot this habeas petition, deprive Petitioner of any meaningful opportunity for judicial review of his detention, and separate him from his family and community in the United States. No post hoc award or remedy can fully repair wrongful removal or the time he has spent in unlawful civil confinement.

Even if Petitioner ultimately prevails on the merits, the time he has already spent in detention and any additional time he remains detained while this case is pending represent an ongoing deprivation of liberty that cannot be compensated later. Loss of physical freedom, family unity, and access to judicial review are quintessential forms of irreparable injury.

B. **Transfer Outside the Court's Jurisdiction Would Frustrate This Court's Authority and the Purpose of Habeas Corpus**

Transferring Petitioner outside this Court's jurisdiction while his petition is pending would directly undermine that purpose by frustrating the Court's ability to adjudicate the legality of his detention and grant effective relief. Courts routinely enjoin transfers in habeas cases to preserve jurisdiction and prevent irreparable harm. Without a temporary restraining order, Respondents could defeat judicial review simply by moving Petitioner to another facility or district before the Court has an opportunity to rule.

3. **THE BALANCE OF EQUITIES STRONGLY FAVORS PRESERVING THE STATUS QUO**

The balance of equities weighs decisively in Petitioner's favor. Granting a temporary restraining order will merely preserve the status quo while this Court adjudicates the legality of Petitioner's detention, whereas denying relief would expose Petitioner to immediate and irreversible harm.

Petitioner faces the loss of his liberty, disruption of access to counsel, and potential frustration of this Court's jurisdiction if he is removed or transferred outside this District. These harms are profound, personal, and irreparable. By contrast, Respondents will suffer no cognizable harm from a temporary restraint on removal or transfer. Respondents supervised Petitioner in the community for approximately seven years without incident, during which time Petitioner complied fully with every condition of supervision. Maintaining that status quo for the limited duration necessary for this Court to rule imposes, at most, a minimal administrative burden. Where the government has successfully supervised an individual for years, it cannot credibly claim hardship from a short, court-ordered pause designed to ensure compliance with the Constitution and governing statutes.

Equity also disfavors allowing the government to defeat judicial review through unilateral action. Permitting Respondents to remove or transfer Petitioner before the Court has an opportunity to rule would undermine the integrity of the judicial process and reward potentially unlawful conduct. Courts sitting in equity

routinely enjoin such actions to ensure that legal claims are resolved on the merits rather than rendered moot.

Accordingly, because the harm to Petitioner absent relief vastly outweighs any inconvenience to Respondents, the balance of equities strongly supports issuance of a temporary restraining order.

**4. THE PUBLIC INTEREST FAVORS ISSUANCE OF A TEMPORARY RESTRAINING ORDER**

The public interest strongly favors issuance of a temporary restraining order. The public has a compelling interest in ensuring that the government acts in accordance with the Constitution, federal statutes, and its own binding regulations. Where serious questions exist regarding the legality of an individual's detention, preserving the status quo while the Court adjudicates those claims serves the public interest.

The public also has a strong interest in maintaining the integrity of the judicial process. Allowing Respondents to remove or transfer Petitioner before this Court can rule on the merits of his habeas petition would risk mootng the case and depriving the Court of its ability to provide effective relief. Courts consistently recognize that safeguarding access to judicial review and preventing evasion of court oversight is a core public interest consideration in cases seeking emergency injunctive relief.

Additionally, the public interest is served by avoiding unnecessary and potentially unlawful detention. Detaining Petitioner, who poses no danger to the community and no risk of flight, imposes significant human and financial costs without advancing any legitimate enforcement objective.

Finally, issuance of a temporary restraining order does not impair the government's ability to enforce the immigration laws. Rather, it ensures that enforcement occurs in a manner consistent with due process and statutory limits. The requested relief is narrowly tailored, temporary, and designed solely to preserve the Court's jurisdiction and prevent irreparable harm while this action is pending. Under these circumstances, the public interest weighs decisively in favor of granting a temporary restraining order.

**VII. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER**

Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with discretion as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District

courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

### **VIII. SCOPE OF REQUESTED RELIEF**

Petitioner seeks a narrowly tailored temporary restraining order that:

- a. Prohibits Respondents and their officers, agents, employees, and all persons acting in concert with them, from transferring Petitioner out of the Southern District of Texas, Brownsville Division, during the pendency of this action or until further order of the Court;
- b. Prohibits Respondents from removing Petitioner from the United States while this action is pending or until further order of the Court; and
- c. Requires Respondents to provide at least seventy-two (72) hours' advance written notice to Petitioner's counsel and the Court before taking any action inconsistent with such an order, including any planned transfer or removal.

### **IX. CONCLUSION**

For the foregoing reasons, Petitioner has satisfied each requirement for issuance of a temporary restraining order. He has demonstrated a strong likelihood of success on the merits of his habeas petition, that he will suffer immediate and

irreparable harm absent injunctive relief, that the balance of equities weighs decisively in his favor, and that the public interest supports preserving the status quo while this Court adjudicates the legality of his detention.

Accordingly, Petitioner respectfully requests that the Court issue a temporary restraining order enjoining Respondents, and all persons acting in concert with them, from removing Petitioner from the United States or transferring him outside the Southern District of Texas, Brownsville Division, during the pendency of this action, and granting such other and further relief as the Court deems just and proper.

Dated: December 17, 2025

Respectfully submitted,

/s/ Veronica Semino  
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